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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/441,683	11/16/1999	JOSEPH B. SLATER	KOS-11702/03	4789

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EXAMINER

SMITH, ZANDRA V

ART UNIT

PAPER NUMBER

2877

DATE MAILED: 12/16/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/441,683

Applicant(s)

SLATER, JOSEPH B.

Examiner

Zandra V. Smith

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-- The MAILING DATE of this communication appears on the cover sheet with the corresponding address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 01 October 2002.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1,2 and 4-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1,2 and 4-7 is/are allowed.
- 6) ☒ Claim(s) 8 and 10-13 is/are rejected.
- 7) ☒ Claim(s) 9 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

*Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 8 and 10-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over

*Kuramoto et al. (5,630,795)* in view of *Alfano et al. (5,261,410)*.

As to **claim 8**, Kuramoto discloses a cleaning tube apparatus for endoscopes, comprising:

a probe body (1), with windows (10) having a surface facing a sample (col. 6, lines 20-25 and col. 12, lines 7-35);

a sampling beam (col. 12, lines 7-9) carrying wavelengths through the window for analysis;

a fluid conduit (2, col. 6, lines 20-25 and col. 12, lines 7-35); and

a flooding structure (9, col. 6, line 24 and col. 12, lines 7-35).

Kuramoto differs from the claimed invention in that Raman Spectra is not used, however the use of Raman Spectra is well known as taught by Alfano. Alfano discloses an endoscope used to determine if a tissue is malignant that includes the use of Raman Spectra (col. 1, line 10). It would have been obvious to one having ordinary skill in the art at the time of invention to use Raman Spectra because certain body constituents produce distinguishable Raman spectra when illuminated with the proper wavelength.

As to **claims 10-16**, Kuramoto and Alfano disclose everything claimed, as applied above, in addition the fluid is a liquid, gas, or solvent (col. 11, lines 35-40).

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As to **claim 13**, Kuramoto and Alfano are silent to the fluid entering the sample after flood, however the endoscope is inserted into the body (col. 1, lines 10-13), therefore the limitation is inherently met.

#### *Allowable Subject Matter*

Claim 1-2 and 4-7 are allowable over the prior art of record.

Claim 9 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter: the prior art of record, taken alone or in combination, fails to disclose or render obvious part of the fluid passing through an aperture to ensure that the sample does not reach the window.

#### *Response to Arguments*

Applicant's arguments filed October 1, 2002 have been fully considered but they are not persuasive. Applicant's representative argues that the combination of Alfano and Kuramoto is incorrect because Kuramoto does not use Raman Spectra and because Alfano does not have a window to clean. The examiner respectfully disagrees. Kuramoto discloses an endoscope with an observation optical system used in medical treatment (col. 12, lines 20-23) and Alfano discloses a specific medical treatment in which to use the endoscope. As stated above, it is necessary at times to use Raman spectra to view certain body parts and seeing that need one of ordinary skill would be motivated to modify Kuramoto to use Raman spectra, especially since

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✓ the examination of body tissue can be messy. Additionally, Alfano was not used to provide limitations pertaining to the window.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Zandra V. Smith whose telephone number is (703) 305-7776. The examiner can normally be reached on 8:00 a.m. - 4:30 p.m..


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Frank G. Font can be reached on (703)308-4881. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-7722 for regular communications and (703) 308-7722 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-0530.

  
Zandra V. Smith  
Primary Examiner  
Art Unit 2877

December 12, 2002